



July 19, 1999

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR99-2010

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126166.

The Texas Alcoholic Beverage Commission (the "Commission") received a request from the Boston Beer Company for "any letter, contract, or agreement that may be contained in the file of Willow Distributors, Inc. pertaining [to] the territorial designation of Boston Beer." You assert that the information requested is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code (the "Code") provides as follows:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Texas Public Information Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the Commission, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." Open Records Letter No. 95-258 (1995).

You explain that Willow Distributors, Inc. currently holds a general distributor's license issued by the Commission. In this case, the documents at issue appear to be "private records" of a licensee. You do not state that Willow Distributors, Inc. has been a party to any hearings. Consequently, we agree that the submitted information is covered by section 5.48 of the Alcoholic Beverage Code.

However, you ask whether the requestor here, a representative of the Boston Beer Company, has a special right of access to the information pursuant to section 552.023 of the Government Code. Section 552.023 grants a *person* or a *person's* authorized representative a special right of access, beyond the right of the general public, to information that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a). A governmental body may not withhold information from the person to whom the information relates, or the person's authorized representative, on privacy grounds, but may withhold information on other grounds. *Id.* § 552.023(b); see Open Records Decision No. 587 (1991) (no special right of access where confidentiality statute protects law enforcement interests). Thus, section 552.023 prevents a governmental body from asserting an individual's own privacy as a reason for withholding records from that individual.

The requestor in this case represents a business entity rather than a person. A business entity or corporation may not claim common-law privacy rights. Open Records Decision No. 600 (1992). Moreover, section 552.023, by its terms, only applies to a "person" whose privacy rights are implicated by the public release of requested information. In any case, the requestor here is not one of the three entities whose privacy the statute protects.<sup>1</sup> We, therefore, find that section 552.023 does not permit the release of the information to the

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<sup>1</sup>Section 102.51 of the Code requires licensed distributors to file with the Commission its agreement with each manufacturer from which the distributor purchases beer for distribution and sale. You explain that Willow Distributors is a licensed distributor that filed the information at issue with the Commission. You also explain that the Code does not require manufacturers such as Boston Beer to file such agreements with the Commission. Section 5.48 protects the "private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise." The privacy interest this provision clearly protects are those of one of the three listed entities, a permittee, licensee, or other person. Boston Beer is therefore not one of the three entities whose privacy the statute protects.

requestor. Accordingly, the Commission must withhold the requested information from the requestor based on section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Kay Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/eaf

Ref.: ID# 126166

Encl. Submitted documents

cc: Mr. Marc E. Sorini  
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(w/o enclosures)